

§ 2886.14

(1) BLM will not impose strict liability for damage or injury resulting primarily from an act of war or the negligence of the United States, except as otherwise provided by law.

(2) As used in this section, strict liability extends to costs incurred by the Federal government to control or abate conditions, such as fire or oil spills, which threaten life, property, or the environment, even if the threat occurs to areas that are not under Federal jurisdiction. This liability is separate and apart from liability under other provisions of law.

(3) You are strictly liable to the United States for damage or injury up to \$2 million for any one incident. BLM will update this amount annually to adjust for changes in the Consumer Price Index for All Urban Consumers, U.S. City Average (CPI-U) as of July of each year (difference in CPI-U from July of one year to July of the following year), rounded to the nearest \$1,000. This financial limitation does not apply to the release or discharge of hazardous substances on or near the grant or TUP area, or where liability is otherwise not subject to this financial limitation under applicable law.

(4) BLM will determine your liability for any amount in excess of the \$2 million strict liability limitation (as adjusted) through the ordinary rules of negligence.

(5) The rules of subrogation apply in cases where a third party caused the damage or injury.

(c) If you cannot satisfy claims for injury or damage, all owners of any interests in, and all affiliates or subsidiaries of any holder of, a grant or TUP, except for corporate stockholders, are jointly and severally liable to the United States.

(d) If BLM issues a grant or TUP to more than one holder, each is jointly and severally liable.

(e) By accepting the grant or TUP, you agree to fully indemnify or hold the United States harmless for liability, damage, or claims arising in connection with your use and occupancy of the right-of-way or TUP area.

(f) We address liability of state, tribal, and local governments in § 2886.14 of this subpart.

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(g) The provisions of this section do not limit or exclude other remedies.

§ 2886.14 As grant or TUP holders, what liabilities do state, tribal, and local governments have?

(a) If you are a state, tribal, or local government or its agency or instrumentality, you are liable to the fullest extent law allows at the time that BLM issues your grant or TUP. If you do not have the legal power to assume full liability, you must repair damages or make restitution to the fullest extent of your powers.

(b) BLM may require you to provide a bond, insurance, or other acceptable security to:

(1) Protect the liability exposure of the United States to claims by third parties arising out of your use and occupancy of the right-of-way or TUP area;

(2) Cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way or TUP area; and

(3) Cover any damages or injuries resulting from the release or discharge of hazardous materials incurred in connection with your use and occupancy of the right-of-way or TUP area.

(c) Based on your record of compliance and changes in risk and conditions, BLM may require you to increase or decrease the amount of your bond, insurance, or security.

(d) The provisions of this section do not limit or exclude other remedies.

§ 2886.15 How is grant or TUP administration affected if the BLM land my grant or TUP encumbers is transferred to another Federal agency or out of Federal ownership?

(a) If there is a proposal to transfer the BLM land your grant or TUP encumbers to another Federal agency, BLM may, after reasonable notice to you, transfer administration of your grant or TUP, for the lands BLM formerly administered, to another Federal agency, unless doing so would diminish your rights. If BLM determines your rights would be diminished by such a transfer, BLM can still transfer the land, but retain administration of your

grant or TUP under existing terms and conditions.

(b) The BLM will provide reasonable notice to you if there is a proposal to transfer the BLM land your grant or TUP encumbers out of Federal ownership. If you request, the BLM will negotiate new grant or TUP terms and conditions with you. This may include increasing the term of your grant to a 30-year term or replacing your TUP with a grant. These changes, if any, become effective prior to the time the land is transferred out of Federal ownership. The BLM may then, in conformance with existing policies and procedures:

(1) Transfer the land subject to your grant or TUP. In this case, administration of your grant or TUP for the lands BLM formerly administered is transferred to the new owner of the land;

(2) Transfer the land, but BLM retains administration of your grant or TUP; or

(3) Reserve to the United States the land your grant or TUP encumbers, and BLM retains administration of your grant or TUP.

(c) You and the new land owner may agree to negotiate new grant or TUP terms and conditions any time after the land encumbered by your grant or TUP is transferred out of Federal ownership.

[70 FR 21078, Apr. 22, 2005, as amended at 73 FR 65074, Oct. 31, 2008]

§ 2886.16 Under what conditions may BLM order an immediate temporary suspension of my activities?

(a) Subject to § 2886.11, BLM can order an immediate temporary suspension of grant or TUP activities within the right-of-way or TUP area to protect public health or safety or the environment. BLM can require you to stop your activities before holding an administrative proceeding on the matter and may order immediate remedial action.

(b) BLM may issue the immediate temporary suspension order orally or in writing to you, your contractor or subcontractor, or to any representative, agent, or employee representing you or conducting the activity. BLM may take this action whether or not any action is being or has been taken

by other Federal or state agencies. When you receive the order, you must stop the activity immediately. BLM will, as soon as practical, confirm an oral order by sending or hand delivering to you or your agent at your address a written suspension order explaining the reasons for it.

(c) You may file a written request for permission to resume activities at any time after BLM issues the order. In the request, give the facts supporting your request and the reasons you believe that BLM should lift the order. BLM must grant or deny your request within 5 business days after receiving it. If BLM does not respond within 5 business days, BLM has denied your request. You may appeal the denial under § 2881.10 of this part.

(d) The immediate temporary suspension order is effective until you receive BLM's written notice to proceed with your activities.

§ 2886.17 Under what conditions may BLM suspend or terminate my grant or TUP?

(a) Subject to § 2886.11, BLM may suspend or terminate your grant if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the grant, or if you abandon the right-of-way.

(b) Subject to § 2886.11, BLM may suspend or terminate your TUP if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the TUP, or if you abandon the TUP area.

(c) A grant or TUP also terminates when:

(1) The grant or TUP contains a term or condition that has been met that requires the grant or TUP to terminate;

(2) BLM consents in writing to your request to terminate the grant or TUP; or

(3) It is required by law to terminate.

(d) Your failure to use your right-of-way for its authorized purpose for any continuous 2-year period creates a presumption of abandonment. BLM will notify you in writing of this presumption. You may rebut the presumption of abandonment by proving that you used the right-of-way or that your failure to use the right-of-way was due to circumstances beyond your control,